The opinion in support of the remand being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte DAVID D. MURESAN
and DAVID MURESAN

_____

Appeal No. 2001-2305
Application 08/669,674

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ON BRIEF

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Before COHEN, MCQUADE, and CRAWFORD, Administrative Patent Judges.

MCQUADE, Administrative Patent Judge.

REMAND TO THE EXAMINER

The instant application has been forwarded to this Board by the examiner for a decision on appeal. Because the record before us raises a serious question as to whether we have jurisdiction to hear an appeal at this point, we remand the application to the examiner under the authority of 37 CFR § 1.196(a) and MPEP § 1211 for resolution of this and other matters.

The record shows the following with regard to our areas of concern.

I. On August 31, 1999, this Board rendered a decision (Paper No. 16) in an earlier appeal (Appeal No. 99-0103) involving the application. The decision sustained the examiner's 35 U.S.C. § 103(a) rejection of claim 1, the sole claim pending in the application, as being unpatentable over U.S. Patent No. 4,760,510 to Lahti.

II. In response to the decision, the appellants ultimately filed a request for a continued prosecution application (Paper No. 23). The request did not include any amendment of the application.

III. In an Office action dated August 15, 2000 (Paper No. 25), the examiner found the request for a continued prosecution application to be acceptable, rejected claim 1 under 35 U.S.C. § 112, second paragraph, as being indefinite and under 35 U.S.C. § 103(a) as being unpatentable over Lahti, and made the Office action final.[1]

IV. After filing what amounted to a request for reconsideration (Paper No. 26) which the examiner viewed to be unpersuasive (see Paper No. 27), the appellants submitted an

[1] Given the inclusion of the new 35 U.S.C. § 112, second paragraph, rejection, the finality of the Office action clearly was premature. See MPEP §§ 706.07(a) and 706.07(b).

appeal brief (Paper No. 28) on November 13, 2000. Upon being notified by the examiner that the brief was not acceptable because the statutory fee for filing the brief had not been submitted (see Paper No. 29), the appellants submitted the requisite fee on December 5, 2000 (see Paper No. 30). The record does not show that the appellants filed a petition and fee for an extension of time to accommodate the delay in paying the appeal brief fee.

V. On February 13, 2001, the examiner issued an examiner's answer (Paper No. 31) in response to the appellants' brief.

VI. On March 23, 2001, the appellants submitted a letter (Paper No. 32) which the examiner characterized as a reply brief and noted (see Paper No. 33) before forwarding the application to this Board.

The record does not indicate that the appellants ever filed, in connection with the current appeal proceedings, a notice of appeal pursuant to 37 CFR § 1.191(a) or the corresponding statutory fee required by 35 U.S.C. § 41(a)(6)(A). This apparent lapse arguably renders the application abandoned, which of course would deprive us of any jurisdiction to hear the appeal. The examiner is directed to take appropriate action to resolve this matter in accordance with the relevant statutes and regulations.

Our review also shows (1) that the explanations of the 35 U.S.C. § 112, second paragraph, rejection in the final rejection (Paper No. 25) and examiner's answer (Paper No. 31) do not address with any reasonable specificity the limitations recited in the claim, and (2) that the appellants' briefs, perhaps understandably, do not contain any reasonably specific argument of this rejection. As a result, the issues pertaining to the rejection have not been developed to the extent necessary for a reasoned consideration on appeal. In the event the appeal is eventually perfected from a procedural standpoint, the examiner is further directed to take appropriate action to rectify this deficiency.

Additionally, the nature of the examiner's remarks in the answer explaining the 35 U.S.C. § 112, second paragraph, and 35 U.S.C. § 103(a) rejections and the copy of the "claim involved in [the] appeal" in the appendix section of the appellants' brief causes us to question whether the examiner and/or the appellants are focusing on the version of claim 1 officially entered into the record, i.e., claim 1 as submitted on December 22, 1997 in Paper No. 5.[2] The examiner is directed to take appropriate

[2] Contrary to the assertion on page 3 thereof, the examiner's answer does not include an appendix showing "claim 1 correctly written."

action to ensure that the officially entered version of the claim is addressed in any further proceedings on appeal.

Finally, given their pro se status and obvious unfamiliarity with patent prosecution practice, the appellants may wish to consider contacting the USPTO's Office of Independent Inventor Programs at (703) 306-5568 for answers to procedural questions relating to the prosecution of their application.

REMANDED

IRWIN CHARLES COHEN Administrative Patent Judge	)	
	)	BOARD OF PATENT
JOHN P. MCQUADE Administrative Patent Judge	)	APPEALS AND INTERFERENCES
MURRIEL E. CRAWFORD Administrative Patent Judge	)	

JPM/kis
DAVID D. MURESAN
18204 30TH AVENUE, N.E.
SEATTLE, WA 98155